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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,256	03/09/2001	Victor S. Moore	6169-181	7052
40987	7590	09/12/2006		
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			EXAMINER CHANKONG, DOHM	
			ART UNIT 2152	PAPER NUMBER

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/803,256

Applicant(s)

MOORE ET AL.

Examiner

Dohm Chankong

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2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

- 1> This action is in response to Applicant's request for continued examination. Claims 1, 12, 18 and 30 are amended. Claims 1-23 and 24-30 are presented for further examination.
- 2> This is a non-final rejection.

#### *Continued Examination Under 37 CFR 1.114*

- 3> A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8.3.2006 has been entered.

#### *Response to Arguments*

- 4> Applicant's arguments with respect to claims 1-23 and 24-30 has been considered but are moot in view of the new ground(s) of rejection.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5> Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 25 is dependent on a cancelled claim.

*Claim Rejections - 35 USC § 103*

6> The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7> Claims 1, 3-7, 9-12, 14-18, 20-23, 25, 26 and 30 are rejected under 35 U.S.C § 103(a) as being unpatentable over Spitzer, U.S Patent Application Publication No. 2001|0054066, in view of Borgstahl et al, U.S Patent No. 6,487,180 ["Borgstahl"], in further view of Pittarelli, U.S Patent Publication No. 2003|0061271.

8> As to claim 1, Spitzer discloses a method for providing kiosk service offerings comprising:

retrofitting an existing, publicly-located and fixed positioned kiosk with a wireless transceiver, wherein said kiosk previously lacked wireless communication capabilities, yet wherein said kiosk was previously configured to communicate over an existing physical communications link medium [0019, 0048, 0049, 0050, 0051];

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configuring said kiosk with a new purpose of providing applications for performing electronic services over short-range radio communications links to wireless devices in a network [0048, 0050];

establishing a short-range communications link with a wireless device in said network [0048];

receiving at the kiosk a request for particular ones of the available electronic services from the wireless device [0057, 0066, 0092];

retrieving selected applications for performing the requested electronic services [0016, 0059]; and

delivering said requested electronic services to said wireless device in said network over said short-range radio communications link by conveying a retrieved application that performs a requested electronic service by executing within said wireless device independently of said kiosk and other devices [0059 where : Spitzer's application executes independently on the wireless device. It is only after a user makes a subsequent request from the application does the application retrieve further information. Otherwise, the application simply runs on the wireless device].

Spitzer discloses maintaining a list of available electronic services provided by the kiosk [Figures 13-15 | 0059, 0060, 0064, 0066 where : the kiosk provides a variety of games or services] but does not explicitly disclose that a portion of the available services are stored locally within the kiosk, and wherein a different portion of the available services are retrievable by the kiosk from an application service provider via the physical communication link.

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Spitzer also does not explicitly disclose that the wireless devices operate over a personal area network (PAN).

9> In the same field of invention, Borgstahl discloses utilizing a PAN as a communications network between wireless devices and a kiosk [abstract | column 3 «lines 35-45»]. It would have been obvious to one of ordinary skill in the art to incorporate Borgstahl's personal area network functionality into Spitzer to insure that connecting nodes (a wireless device and a pay phone for instance) have compatible protocols and can properly communicate with one another.

10> Pittarelli discloses that a portion of the available services are stored locally within the kiosk, and wherein a different portion of the available services are retrievable by the kiosk from an application service provider via the physical communication link [Figure 7 «items 126, 128, 32» | 0036, 0037, 0038]. It would have been obvious to modify Spitzer's kiosk with the "cache" functionality provided by Pittarelli. Such an implementation is well known in the art so that requested services can be delivered more quickly to users when they are already located on the kiosk.

11> As to claim 3, Spitzer discloses the method of claim 1, wherein said kiosk was a single purpose kiosk before said retrofitting step, and wherein the kiosk has at least two purposes after the retrofitting step, one of the two purposes being said new purpose and another of the two purposes being an original purpose of the kiosk [0050].

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12> As to claim 4, Spitzer discloses the method of claim 1, wherein said existing physical communications link medium is selected from the group consisting of a telephone network communications link and a data communications link [0052].

13> As to claim 5, Spitzer discloses the method of claim 1, wherein said step of retrieving specified electronic services over said existing communications network comprises retrieving electronic messages from an electronic mail server communicatively linked to said kiosk over said existing physical communications link medium [0059 where: Spitzer does not explicitly disclose an email server, he does disclose retrieving email from an email service provider. An email server is inherent to such a service and would be necessary for Spitzer's service to be successful implemented].

14> As to claim 6, Spitzer discloses the method of claim 1, wherein said step of retrieving specified electronic services over said existing physical communications link medium comprises retrieving an application from an application service provider (ASP) communicatively linked to said kiosk over said existing physical communications link medium [0017, 0019 where: while Spitzer does not explicitly disclose an ASP, such a provider would be inherent to Spitzer's delivery of the content and services].

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15> As to claim 7, Spitzer discloses the method of claim 1, wherein said delivering step comprises: said kiosk delivering electronic mail to an electronic mail client in said wireless device [0059 where : Spitzer discloses that the application contains an email option].

16> As to claim 9, Spitzer discloses the method of claim 8, further comprising:  
presenting within the wireless device a plurality of applications [Figures 13-15 | 0099  
where : Spitzer discloses various applications such as the ability to download coupons, info or  
games]; and

said kiosk receiving a user-selection of one of the presented applications [Figures 13-15  
| 0057].

Spitzer does not explicitly disclose determining if said user-selected applications wholly reside in said kiosk. And while Spitzer does disclose delivering said user-selected applications to said wireless device in said PAN he does not disclose the step of if it is determined that said user-selected applications wholly reside in said kiosk, not retrieving said user-selected applications over said existing physical communications link medium.

17> In the same field of invention [abstract], Pittarelli discloses:  
determining if said user-selected applications wholly reside in said kiosk [0038]; and,  
if it is determined that said user-selected applications wholly reside in said kiosk, not  
retrieving said user-selected applications over said existing physical communications link  
medium [0038]. It would have been obvious to one of ordinary skill in the art to incorporate  
Pittarelli's kiosk storage capability into Spitzer's kiosk application delivery system.



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Specifically, one of ordinary skill in the art would have reasonably inferred that first checking the cache of the kiosk for selected applications before requesting the application from a remote server would have substantially improved Spitzer's kiosk services because it would have reduced unnecessarily connecting to the network to retrieve applications. One would have further expected success because Spitzer discloses that his kiosk contains memory capability [0057].

18> As to claim 10, Spitzer discloses the method of claim 9, further comprising; retrieving components not residing in said kiosk over said existing physical communications link medium [0057].

Spitzer is silent to determining in the components of said user-selected applications reside in said kiosk; and,

delivering said components determined to reside in said kiosk.

19> In the same field of invention, Pittarelli discloses:

determining in the components of said user-selected applications reside in said kiosk [Figure 7 | 0038]; and,

delivering said components determined to reside in said kiosk [Figure 7 | 0038].

As specified in the rejection of claim 9, it would have been obvious to incorporate application caching functionality into Spitzer's kiosk as taught by Pittarelli. It would have been further obvious to one of ordinary skill in the art to determine if the application is already stored in the kiosk, and if it is to deliver the selected application from the kiosk,

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without needing to download it from the server. Such functionality would reduce the airtime charges of having the kiosk connect to a remote server.

20> As to claim 11, as it does not teach or further define over the claimed limitations of claims 9 and 10, claim 11 is rejected for similar reasons set forth in the rejections of claims 9 and 10, *supra*.

21> As to claim 12, as it does not teach or further define over previously claimed limitations, it is similarly rejected for at least the same reasons set forth for claim 1.

22> As to claim 14, Spitzer discloses the kiosk of claim 12 wherein said kiosk is a public telephone [0050].

23> As to claim 15, Spitzer discloses the kiosk of claim 12, wherein said physical communications link medium is selected from the group consisting of a telephone network communications link and a data communications link [0052].

24> As to claim 16, Spitzer discloses an application server [0021].

25> As to claim 17, Spitzer discloses the kiosk of claim 12, wherein said communications network is an Internet [0052].

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26> As to claim 18, as it does not teach or further define over the previously claimed limitations, it is similarly rejected for at least the same reasons set forth for claims 1 and 12.

27> As to claim 20, Spitzer discloses the method of claim 18, wherein said step of retrofitting the kiosk comprises retrofitting said kiosk so that the kiosk retains its original purpose while also performing said new purpose [0048, 0050]; and

wherein the step of configuring said kiosk comprises activating said retrofitted kiosk in said publicly traversable area [0048, 0050].

28> As to claims 21-23, Spitzer discloses the method of claim 1, wherein the kiosk functions as a wireless access point for accessing an Internet [0015].

29> As to claim 25, Spitzer discloses the wireless device includes input/output components configured as a user-interface for purposes related to the electronic services [Figures 13-15].

30> As to claim 26, Spitzer discloses the method of claim 1, wherein the existing, single-purpose, publicly-located, and fixed positioned kiosk is selected from the group consisting of a payphone, ticket counter, and a gasoline station island [0052].

31> As to claim 30, as it does not teach or further define over the previously claimed limitations, it is similarly rejected for at least the same reasons set forth for claim 1.

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32> Claims 2, 13, 19 and 27-29 are rejected under 35 U.S.C § 103(a) as being unpatentable over Spitzer, Borgstahl, and Pittarelli, in further view of Freeny, Jr., U.S Patent No. 6.490.443 ["Freeny"].

33> As to claim 2, Spitzer does not disclose utilizing Bluetooth. However Spitzer discusses utilizing wireless links between the wireless device and the kiosk [0055]. Freeny expressly discloses establishing a BLUETOOTH based communications link with said wireless device [column 38 «lines 25-32»]. It would have been obvious to one of ordinary skill in the art to incorporate Bluetooth technology into Spitzer to provide an additional means of establishing wireless connections.

34> As to claims 13 and 19, as they do not teach or further define over previously claimed limitations, they are similarly rejected for at least the same reasons set forth for claim 2.

35> As to claims 27-29, Spitzer does not disclose s gas station island, a ticketing booth or a toll booth.

36> Freeny discloses said kiosk is a gas station island [column 2 «line 9»], a ticketing booth [column 4 «lines 41-53»], or a toll booth [column 4 «lines 41-53»]. It would have been obvious to one of ordinary skill in the art to incorporate Freeny's teaching into Spitzer to

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increase the functionality of Spitzer's system by enabling a wide variety of access points.

This modification is consistent with Spitzer's goals [0050].

37> Claim 8 is rejected under 35 U.S.C § 103(a) as being unpatentable over Spitzer and Borgstahl, in further view of Sutter, U.S Patent No. 6,577,720.

38> As to claim 8, Spitzer does not specifically disclose the method wherein said retrieved application is retained within and remains executable by the wireless device even after said wireless device is disconnected from said PAN.

39> In the same field of invention [column 2 «lines 34-38» | column 4 «line 59» to column 5 «line 6»] Sutter discloses downloading an application where it is retained within and remains executable by the wireless device even after said wireless device is disconnected from said PAN [column 5 «lines 30-40» where: while Sutter does not explicitly state that the application (music, video) is retained, one of ordinary skill in the art would have reasonably inferred such a capability. Otherwise, Sutter's invention would require the wireless device to remain connected to the fixed location terminal to play the downloaded media. Such an expectation is counter intuitive to the benefits of utilizing the wireless device, and therefore, one of ordinary skill in the art would expect the music, video to be retained and remain executable even after leaving the PAN]. It would have been obvious to one of ordinary skill in the art to incorporate Sutter's music/video off-line capability into Spitzer to allow

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downloaded services and applications to be taken away from the fixed pay phone and utilized in the full capacity of the wireless device.

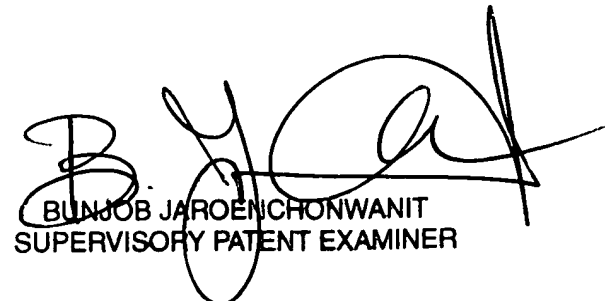
### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dohm Chankong whose telephone number is 571.272.3942. The examiner can normally be reached on Tuesday-Friday [7:30 AM to 4:30 PM].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571.272.3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DC

  
BUNJOB JAROENCHONWANIT  
SUPERVISORY PATENT EXAMINER